

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.622(b)
Digital Television Table of Allotments
Fajardo, Puerto Rico

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MM Docket No. 2000-____
RM-____

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Eastern Television Corporation, licensee of television station WRUA, NTSC Channel 34, Fajardo, Puerto Rico, by its attorneys and pursuant to Section 1.401 of the Commission's rules, hereby petitions the Commission to amend Section 73.622(b), its Digital Television Table of Allotments, to allocate Channel 38 as the paired digital television ("DTV") channel assigned to WRUA and to modify the license of WRUA accordingly without accepting competing applications for Channel 38.

INTRODUCTION

The Commission issued a construction permit for a new full power on NTSC Channel 34 at Fajardo, Puerto Rico on February 27, 1989,¹ making the station eligible under the Commission's initial eligibility criteria for a paired DTV channel.² Nevertheless, the station was

¹The station filed its application for a covering license on January 2, 1997, and the application was granted by the Commission on May 14, 1997. See FCC File No. BLCT-19970102KE. The station was operating pursuant to program test authority as of January 2, 1997, when its license application was filed.

²"The Commission 'should limit initial eligibility for [DTV] licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct a station (or both).'" In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 at

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singled out by the Commission to be the only existing eligible broadcast television not to be included in the Commission's initial DTV Table of Allotments. The Commission attributed this omission to the limited availability of spectrum in Puerto Rico, which resulted in only 33 DTV channels being available for pairing with Puerto Rico's 34 NTSC facilities. At the time the Commission adopted the DTV Table of Allotments, it noted that WRUA was the single instance in the country where it had failed to meet its primary objective of full accommodation of all eligible broadcasters.³

WRUA, as opposed to any other Puerto Rico station, was selected to be the only unpaired eligible station essentially through a process of elimination. In determining which stations would get Puerto Rico's limited DTV channels, the Commission gave first priority to operating stations with second priority going to stations having only construction permit status. WRUA was placed in the latter category despite the fact that, as of the April 3, 1997 cutoff date for initial eligibility for DTV paired channels, the station was operating pursuant to program test authority.⁴ Paired

²(...continued)

¶17 (1997) (quoting 47 U.S.C. § 336(a)(1) [hereinafter the *Fifth Report and Order*]. The Commission issued the initial DTV licenses in the *Fifth Report and Order* on April 3, 1997.

³In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588 at ¶ 367 (1997) [hereinafter *Sixth Report and Order*]. According to the *Sixth Report and Order*, the DTV Table meets the Commission's primary objective of full accommodation of all eligible broadcasters -- with the single exception of Puerto Rico, where the Commission selected one eligible station to be denied a paired DTV channel because of limited channel availability. Of 67 channels in the TV broadcast bands in Puerto Rico, 34 are either operating or have been awarded construction permits, including WRUA, and another has been requested in a pending NTSC application, leaving only 32 channels available for DTV allotments. To make the best use of frequencies available, the Commission reused the channel for which the ineligible NTSC application is pending, bringing to 33 the number of the DTV allotments available for pairing with the 34 eligible Puerto Rico stations. By process of elimination, the Commission selected WRUA to be the single eligible station that would not receive a paired DTV allotment.

⁴Licensees and permittees with constructed facilities having program test authority are
(continued...)

DTV channels were allotted to all stations in the first category. Then, the Commission identified WRUA as the only channel in the second category which was located in a multi-station community and determined that WRUA therefore would be the country's only eligible station to be denied a paired DTV channel.

In making this determination, the Commission suggested that it would make available a DTV channel for pairing with WRUA after an appropriate engineering analysis. Indeed, the Commission specifically suggested the pairing of a channel such as Channel 38 which is duplicated on the west end of the island due to WRUA's location in a community at the east end of the island.⁵ As the Commission contemplated, WRUA is now submitting for Commission review its proposal for a paired DTV allotment. As demonstrated below, both the engineering and the public interest support WRUA's proposed allotment.

DISCUSSION

Channel 38 can be allocated as WRUA's DTV channel in accordance with the same procedures the FCC utilized in establishing the DTV Table of Allotments. The proposed operation on Channel 38 using the station's authorized NTSC transmitter site provides full coverage over Fajardo, Puerto Rico, WRUA's community of license. Moreover, DTV Channel 38 can be allotted to WRUA for DTV operations, without causing any harmful interference to any other analog NTSC or DTV station or allotments in excess of that permitted under the

⁴(...continued)
equally considered to be operating stations for purposes of eligibility. In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340 at ¶ 9 (1992).

⁵Sixth Report and Order at n. 367.

Commission's guidelines.⁶ See the attached Engineering Exhibit.⁷

Inasmuch as Channel 38 meets the technical criteria for allocation as WRUA's paired DTV channel, the public interest dictates that the Commission grant this proposal. In establishing DTV service, the Commission stated that full accommodation of all eligible broadcasters was its primary goal to preserve the service of all existing TV broadcast stations.⁸

In granting paired channels to those broadcasters whose operations would be disrupted if they had to use their NTSC channel for DTV operations, the FCC protected all existing broadcasters, except WRUA, from the hardships of converting on channel thus avoiding imperiling free-over-the-air television broadcasting and speeding the implementation of DTV service.

In the case of WRUA, however, the Commission has failed to meet its goal. In order for WRUA to convert from analog to digital operation on Channel 34, the station will likely have to cease operations for a least some period of time. Thus, the public will be deprived of service from WRUA when the station completes its transition to high quality, reliable DTV service. Accordingly, Channel 38 must be assigned to WRUA as its digital channel if the important public interest of avoiding disruption of service is to be served.

Further, the failure to allocate a paired DTV channel to WRUA will likely delay the introduction of DTV service over the station. As noted, without a paired DTV channel, WRUA

⁶The licensee has been in communication with WDWL, Bayamon, Puerto Rico, and the Radio Observatory at Arecibo, Puerto Rico in connection with this proposal. Neither has indicated an objection hereto.

⁷It is noted that Eastern Television Corporation recently acquired the station. The attached engineering was originally prepared in the name of the station's seller.

⁸Sixth Report and Order at ¶ 11; In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Further Notice of Proposed Rule Making, 7 FCC Rcd 5376 at ¶ 10 (1992).

will have to convert its analog operation to digital operation using its current NTSC channel assignment, Channel 34. With respect to pending NTSC applicants who will not be awarded a paired channel, the Commission has stated that permitting stations to convert to DTV on their analog channels gives them the freedom to choose when, during the digital transition, to convert to DTV.⁹ In WRUA's case, however, the Commission has given the station no choice but to wait until the last possible moment to convert to avoid losing those in its well-established base of viewers with analog-only receivers as well as to delay the time when WRUA's service to the public will be interrupted. It should also be noted that the failure to afford WRUA a paired DTV channel will seriously hinder the station's ability to compete with the other stations in its market. The stations which have been given paired DTV channels will be able to maintain normal broadcast operations on their NTSC channels while they take the post-DTV construction steps necessary, over a period of weeks, and possibly months, to insure high quality, reliable DTV operations and reclaim their analog-only viewers until the end of the transition period. In contrast, as mentioned above, with no paired DTV channel, WRUA will be forced to delay its roll out of DTV service to avoid the loss of audience and to postpone the time when it will have to interrupt its NTSC operations when it begins to undergo the same quality/reliability DTV review and adjustment process. Thus, Channel 38 must be assigned to WRUA as its paired DTV channel to promote the Commission's goal of an orderly and speedy roll out of the new DTV service.

⁹In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Memorandum Report and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 CR 522 at ¶ 20 (released December 18, 1998).

Finally, WRUA's application for its DTV facilities should not be subjected to competing applications or auction procedures. Pursuant to the Telecommunications Act of 1996,¹⁰ stations, such as WRUA, which held a construction permit on the date of issuance of the initial DTV licenses were eligible to receive a paired channel. The Commission issued its initial DTV licenses on April 3, 1997, in the *Fifth Report and Order*. Pursuant to Section 309(j) of the Communications Act,¹¹ the issuance of initial DTV licenses is exempt from the use of competitive bidding. As WRUA was eligible to receive an initial DTV license on a paired channel on the date that the initial licenses were issued, it should not face competing applications at the time it files its application for its DTV facility on Channel 38 upon grant of the instant Petition. Moreover, as this Petition for Rule Making is filed by the May 1, 2000 deadline for filing of maximized DTV facilities set in the Community Broadcasters Protection Act,¹² maximized facilities on DTV Channel 38 at Fajardo, Puerto Rico should be protected from Class A television considerations.

For the reasons set forth herein, the public interest supports the granting of a paired DTV channel, and there is no engineering or legal justification to the contrary. If the Commission allocates the channel as requested herein, the station will promptly file the appropriate modification application to specify DTV operation on Channel 38 at Fajardo, Puerto Rico.

¹⁰47 U.S.C. § 336(a).

¹¹47 U.S.C. § 309(j)(2)(B).

¹²47 U.S.C. § 336(f).


CONCLUSION

For the foregoing reasons, Eastern Television Corporation respectfully requests the Commission to allocate Channel 38 at Fajardo, Puerto Rico as the digital paired channel for WRUA.

Respectfully submitted,

EASTERN TELEVISION CORPORATION

By: _____


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Dated: May 1, 2000

ENGINEERING REPORT

WES, INC.
5925 Cromo Dr.
El Paso, TX 79912

915-581-0306

**ENGINEERING EXHIBIT
PETITION TO MODIFY THE TABLE OF
ALLOTMENTS TO SPECIFY A
DIGITAL CHANNEL TO PAIR
WITH ANALOG NTSC STATION
WRUA-TV, FAJARDO, PUERTO RICO**

October 25, 1999

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ENGINEERING STATEMENT

Wes, Inc.

DECLARATION

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Damarys De Jesus

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in dark ink, appearing to read 'Pete E Myrl Warren, III', written over a horizontal line.

Pete E Myrl Warren, III

Executed on the 25th day of October, 1999

Narrative Statement

I. GENERAL

This engineering report has been prepared on behalf of Damarys de Jesus, permittee of WRUA Channel 34, Fajardo, Puerto Rico, in support of its request for a paired channel (Channel 38) for its digital television (DTV) operation. WRUA is entitled to a digital pair and was the only station on the air at the time of the creation of the digital allotment table that was not granted a digital pair.

II. ENGINEERING DISCUSSION

Station WRUA's authorized analog NTSC operation is on Channel 34 with 50 kW effective radiated power (ERP) and 877 meters antenna height above average terrain (HAAT) using a directional slot array, ALP16L2-HP-34 from Andrew. The WRUA transmitter site is located in Rio Grande, Puerto Rico, at the El Yunque Electronic Site with the following geographic coordinates:

North Latitude: 18° 18' 36"

West Longitude: 65° 47' 41"

It is proposed to amend Section 73.622 of the Commission's rules, Digital Table of Allotments, to allot Channel 38 (614-620 MHz) for the digital television operation of WRUA at Fajardo, Puerto Rico. As demonstrated below, the proposed Channel 38 DTV operation at Fajardo, Puerto Rico would not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines.

The proposed DTV Channel 38 can operate from the authorized WRUA antenna site with 50 kW directional ERP and 877 meters HAAT without adversely impacting other TV operations. A tabulation of the relative field of the proposed antenna pattern is provided for in Exhibit E-2. The proposed Channel 38 would serve all of Fajardo, Puerto Rico within the 41 dBu contour as shown on the attached Exhibit E-1. The proposed antenna also provides a null of Arecibo Radio Observatory of 11.88 dB.

Analog NTSC TV Allocation Situation

The attached Table I shows the pertinent study stations within the Commissions required study distance of 429 kilometers. Within the required study distance, only two stations are short-spaced to the proposed DTV 38. Bayamon, Channel 36 is a second adjacent to the proposed DTV 38, and therefore will not receive any harmful interference from the applicant. San Sebastian WJWN Channel 38 is 146.3 kilometers from the proposed site. This proposal is similar to several other re-uses of channels already proposed in Puerto Rico. The applicant also proposes a null in excess of 11 dB towards San Sebastian and does not overlap the protected 64 dBu contour of San Sebastian Channel 38 with its interfering contour. No significant interference is anticipated.

DTV Allocation Situation

The attached Table II shows the pertinent nearest co-channel and adjacent DTV allotments within 429 kilometers of the proposed rule-making. There are no other digital channel 38's within 429 kilometers. The only adjacent digital within 250 kilometers is Digital Channel 39 in San Sebastian, Puerto Rico. San Sebastian WJWN-DT is 146.27 kilometers away from the proposed DTV Channel 38 in Fajardo. This separation distance is well within the required 88.5 kilometers. No significant interference is anticipated.

III. Summary

Due to the fact that channel 34 in Fajardo is entitled to a digital pair, and that none has been assigned to it in the table of allotments and that this allocation would provide no significant interference and the spacing and interference criteria are less egregious than most of the DTV allocations in Puerto Rico, this should be grant

Table 1
Fajardo, PR DTV 38
DTV to NTSC Spacing Study
by WES, Inc. Broadcast Consultants

***** TV CHANNEL SPACING STUDY *****

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Job title: Fajardo
Channel: 38
Database file name: tv990915.edx
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Latitude: 18 18 36
Longitude: 65 47 41

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
240	WJPX	34	SAN JUAN	PR	2	L	241.7	7.1	<24.1	17.0
240	WJPX	35	SAN JUAN	PR	2	C	241.7	7.1	<24.1	17.0
340	WRUA	39	FAJARDO	PR	2	L	.0	.0	<24.1	24.1
400	WMTJ	41	FAJARDO	PR	2	L	.0	.0	<24.1	24.1
400	WMTJ	42	FAJARDO	PR	2	C	.0	.0	<24.1	24.1
460	WIDP	47	GUAYAMA	PR	2	L	240.6	7.0	<24.1	17.1
520	WZDE	48	CAROLINA	PR	2	C	240.8	7.1	<24.1	17.0
360	WDWL	211	BAYAMON	PR	2	L	263.9	33.6	<24.1	- 9.5
380	WJWNTV	282	SAN SEBASTIAN	PR	2	L	270.6	146.3	244.7	-98.4

***** End of channel 38 study *****

Table 2
Fajardo, PR DTV 38
DTV to DTV Spacing Study
by WES, Inc. Broadcast Consultants

Study Location:
Fajardo, PR Channel 38

DTV Study Station, Transmitter Coordinates: 18-18-36 N 65-47-41 W

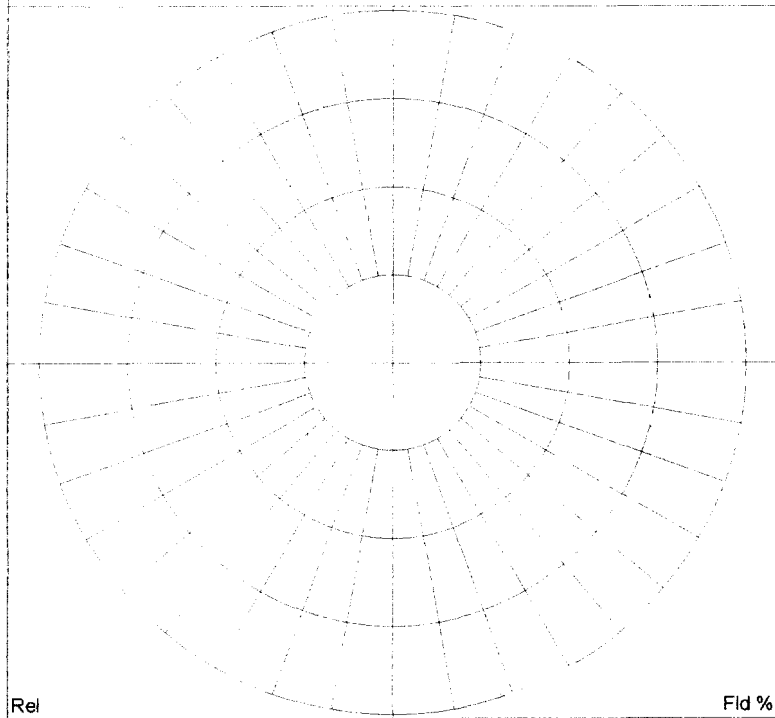
Study distance: 429 km

DTV TO DTV STUDY RESULTS

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
San Sebastian	PR	39	270.36	146.27	88.50	57.77

Station is in the clear!

Exhibit E-2
Fajardo, PR DTV 38
Antenna Pattern
 by WES, Inc. Broadcast Consultants



Az.	Fld%	ERP	dBk
000	0.910	41.405	16.171
005	0.940	44.180	16.452
010	0.970	47.045	16.725
015	0.985	48.511	16.858
020	1.000	50.000	16.990
025	1.000	50.000	16.990
030	1.000	50.000	16.990
035	0.975	47.531	16.770
040	0.950	45.125	16.544
045	0.925	42.781	16.313
050	0.900	40.500	16.075
055	0.870	37.845	15.780
060	0.840	35.280	15.475
065	0.810	32.805	15.159
070	0.780	30.420	14.832
075	0.760	28.880	14.606
080	0.740	27.380	14.374
085	0.735	27.011	14.315
090	0.730	26.645	14.256
095	0.735	27.011	14.315
100	0.740	27.380	14.374
105	0.760	28.880	14.606
110	0.780	30.420	14.832
115	0.810	32.805	15.159
120	0.840	35.280	15.475
125	0.870	37.845	15.780
130	0.900	40.500	16.075
135	0.925	42.781	16.313
140	0.950	45.125	16.544
145	0.975	47.531	16.770
150	1.000	50.000	16.990
155	1.000	50.000	16.990
160	1.000	50.000	16.990
165	0.985	48.511	16.858
170	0.970	47.045	16.725
175	0.940	44.180	16.452

Az	Fld%	ERP	dBk
180	0.910	41.405	16.171
185	0.865	37.411	15.730
190	0.820	33.620	15.266
195	0.760	28.880	14.606
200	0.700	24.500	13.892
205	0.635	20.161	13.045
210	0.570	16.245	12.107
215	0.500	12.500	10.969
220	0.430	9.245	9.659
225	0.365	6.661	8.236
230	0.300	4.500	6.532
235	0.275	3.781	5.776
240	0.250	3.125	4.949
245	0.255	3.251	5.121
250	0.260	3.380	5.289
255	0.275	3.781	5.776
260	0.290	4.205	6.238
265	0.295	4.351	6.386
270	0.300	4.500	6.532
275	0.295	4.351	6.386
280	0.290	4.205	6.238
285	0.275	3.781	5.776
290	0.260	3.380	5.289
295	0.255	3.251	5.121
300	0.250	3.125	4.949
305	0.275	3.781	5.776
310	0.300	4.500	6.532
315	0.365	6.661	8.236
320	0.430	9.245	9.659
325	0.500	12.500	10.969
330	0.570	16.245	12.107
335	0.635	20.161	13.045
340	0.700	24.500	13.892
345	0.760	28.880	14.606
350	0.820	33.620	15.266
355	0.865	37.411	15.730